FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a special hearing to approve the nonconforming use of the subject property as a twelve unit apartment building in accordance with Petitioner's Exhibit 1.

The Petitioners, by Lowrie B. Sargent, appeared and testified. There were no Protestants.

Testimony indicated that the subject property, known as 2012 Russell Avenue, consists of 0.544 acres more or less, zoned D.R. 5.5 and is improved with a 3.5 story masonry dwelling containing twelve apartments. Lowrie Sargent testified that he and Stephen Smith, trading as L & S Management, have owned the subject property since 1984 and are in the process of selling it. Testimony indicated that in order to secure its sale as a twelve-unit apartment building, Petitioners must provide written verification from Baltimore County that the property is zoned properly for such use. Prior to obtaining such written verification, Petitioners must prove that the property has been used continuously and without interruption as a twelve unit apartment building since prior to the effective date of the zoning regulations and thus enjoys a legal nonconforming use inasmuch as the property does not meet current zoning requirements. In support of their request, Mr. Sargent submitted the signed affidavits of Helen C. Putnam, Ruth H. Rixham, and S. Ward Tiernan which indicate that the property has been used continuously and without interruption as a twelve unit apartment building since as early as 1938. Evidence submitted indicated that Ms. Putnam's uncle, Walter Crismer, actually constructed the building in 1924 and converted it to twelve apartments in 1938. The testimony and evidence presented indicate that the relief requested is within the spirit and intent of the B.C.Z.R. and will not result in any detriment to the health, safety or general welfare of the surrounding community.

As with all nonconforming use cases, the first task is to determine what lawful nonconforming use existed on the subject property prior to January 2, 1945, the effective date of the adoption of the Zoning Regulations and the controlling date for the beginning of zoning.

The second principle to be applied, as specified in Section 104.1, is whether or not there has been a change in the use of the subject property. A determination must be made as to whether or not the change is a different use, and therefore, breaks the continued nature of the nonconforming use. If the change in use is found to be different than the original use, the current use of the property shall not be considered noncon-See McKemy v. Baltimore County, Md., 39 Md. App. 257, 385 A2d. 36 (1978).

When the claimed nonconforming use has changed, or expanded, then the Zoning Commissioner must determine whether or not the current use represents a permissible intensification of the original use or an actual change from the prior legal use. In order to decide whether or not the current activity is within the scope of the nonconforming use, the Zoning Commissioner should consider the following factors:

> "(a) To what extent does the current use of these lots reflect the nature and purpose of the original nonconforming use;

> > - 2-

(b) Is the current use merely a different manner of utilizing the original nonconforming use or does it constitute a use different in character, nature, and kind;

(c) Does the current use have a substantially different effect upon the neighborhood;

(d) Is the current use a "drastic enlargement or extension" of the original non-conforming use."

McKemy v. Baltimore County, Md., Supra.

After due consideration of the testimony and evidence presented, it is clear that practical difficulty or unreasonable hardship would result if the relief requested in the special hearing were not granted. It has been established that the requirements from which the Petitioner seeks relief would unduly restrict the use of the land due to the special conditions unique to this particular parcel. It is clear from the testimony that the subject property has been used continuously and without interruption as a twelve unit apartment building since prior to the effective date of the zoning regulations and as such, enjoys a legal nonconforming use. In addition, the relief requested will not be detrimental to the public health, safety, and general welfare.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested in the Petition for Special Hearing should be granted.

THEREFORE. IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this $\frac{G^{\gamma\gamma}}{2}$ day of January, 1992 that the Petition for Special Hearing to approve the nonconforming use of the subject property as a twelve-unit apartment building, in accordance with Petitioner's Exhibit 1, be and is hereby GRANTED.

Deputy Zoning Commissioner for Baltimore County

Petition for Special Hearing

to the Zoning Commissioner of Baltimore County

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve the non-informing use of 2012 Kussell Ayerive 25 2 twelve unit apartirent building

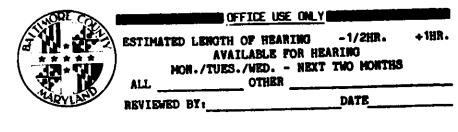
Property is to be posted and advertised as prescribed by Zoning Regulations. I, or we, agree to pay expenses of the above Special Hearing advertising, posting, etc., upon filing of this Petition, and further agree to and are to be bound by the zoming regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser/Lessee: Lowrie B Surgert (Type or Print Name) (Type or Print Name) Address City and State Attorney for Petitioner: 13243 Westmerthle 311-884-0936 (Type or Print Name) Clarksville 117 21029 City and State

Legal Owner(s):

Name, address and phone number of legal owner, contract purchaser or representative to be contacted Lowere B Surgent % 1. & S Mariagement City and State Ellicatt C.ty My 21043 (31) 954-0938



92-221-SPH

ZONING DESCRIPTION

Beginning at a point on the Northerly side of Russell Avenue (40 feet wide) at its intersection with the East side of Russell Court (22 feet wide), thence running the following courses and distances; 1) South 57 58' West 142.59 feet

2) North 62 10' West 93.56 feet

3) 64.52 feet by a curve to the right having a radius of 31.5 feet and a chord bearing North 03 18' East 53.92 feet

4) North 55 35' East 122.93 feet

5) North 34 23' West 20.3 feet 6) North 55 35' East 41.6 feet

7) South 32 02' East 155.23 feet to the point of beginning, as recorded in deed Liber EHK Jr No. 6701 folio 458.

Being the parcel shown as "Crismer Apartments" in the subdivision of "Russell Terrace" as recorded in Plat Book No. 12 folio 27.

Containing 0.544 acres of land, more or less.

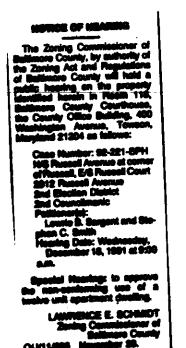
Also known as 2012 Russell Avenue in the 2nd Election District.



92-221-5PH CERTIFICATE OF POSTIN ZONING DEPARTMENT OF BALTIMORE COUNTY

District Ind.	Date of Posting Merember 15, 1991
Posted for: Special Harin	To let be levithe
Petitioner Towns Bargine	and Stephen C. Smith remu at corner of Ausaell., E/S Russell
Court 2012 Russel are	rue.
Location of Signer In front of &	012 Purull arme
Remarks:	
Q. arata	Date of return: December 2, 1991

CERTIFICATE OF PUBLICATION



Nov. 29, 1991

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of _ weeks, the first publication appearing on $\frac{70v.28}{}$, 19 $\frac{91}{}$.

Baltimore County Government Zoning Commissioner Office of Planning and Zoning

Suite 113 Courthouse 400 Washington Avenue Towson, MD 21204

(410) 887-4386

January 9, 1992

Mr. Lowrie B. Sargent 13243 Westmmeath Lane Clarksville, Maryland 21029

RE: PETITION FOR SPECIAL HEARING

N/S Russell Avenue at E/S of Russell Court (2012 Russell Avenue) 2nd Election District - 2nd Councilmanic District Lowrie B. Sargent and Stephen C. Smith - Petitioners Case No. 92-221-SPH

Dear Mr. Sargent:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Special Hearing has been granted in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact Ms. Charlotte Radcliffe at 887-3391.

TIMOTHY M. KOTROCO

for Baltimore County

Deputy Zoning Commissioner

TMK:bjs

NOTICE OF HEATING

The Zoning Commissioner of Battmore County, by authority of the Zoning Act and Regulations of Battmore County will took a public hearing on the property identified herein in Room 118, Battmore County Courthouse, the County Office Building, 400 Meublisten Authority, Tourion.

Washington Avenue, Towern Maryland 21204 es follows:

Case Number: 98-221-8PH
1MS Russell Avenue at comes
of Russell, E/S Russell Court
2012 Russell Avenue
2nd Election District
2nd Councilments
Publisher(s):
Lourie B. Sargent and Steplace C. Smith

Special Hearing: to approve he non-conforming use of a waive unit apartment dwelling.

cc: People's Counsel

CERTIFICATE OF PUBLICATION

THIS IS TO CERTIFY, that the annexed advertisement was published in OWINGS MILLS TIMES, a weekly newspaper published in Towson, Baltimore County, Md., once in each of ____ successive weeks, the first publication appearing on 2%_____, 19_91_.

OWINGS MILLS TIMES.

13. Take 5

H9200232

PUBLIC HEARING FEES

PRICE

040 -SPECIAL HEARING (OTHER) 1 X \$175,00

TOTAL: \$175.00 LAST NAME OF OWNER: SHRGENT/SMITH

Please Make Ch@440094963312 Bel9@ore County \$175.00 BA C002:33FM11-13-91

Bultimore County

Zoning Commision

County Office Building

111 West Chesapeake Avenuation
Towson, Maryland 21204 Zoning Commisioner 111 West Chesapeake Avenue Towson, Maryland 21204

Account: R-001-6150

tqieeen

12-15 91 71-11.000

Please Make Checks Payable To: Baltimore County

Zoning Plans Advisory Committe Coments Date:December 10, 1991

> Anyone using this system should be fully aware that they are responsible for the accuracy and completeness of any such petition. All petitions filed in this manner will be reviewed and commented on by Zoning personnel prior to the hearing. In the event that the peition has not been filed correctly, there is always a possibility that another hearing will be required or the Zoning Commissioner will deny the petition due to errors or imcompleteness.

> Attorneys and/or engineers who make appointments to file petitions on a regular basis and fail to keep the appointment without a 72 hour notice will be required to submit the appropriate filing fee at the time future appointments are made. Failure to keep these appointments without proper advance notice, i.e. 72 hours, will result in the loss of filing fee.

> > Zoning Plans Advisory Committee

JED:jw Enclosures Baltimore County Government Office of Zoning Administration and Development Management Office of Planning & Zoning

111 West Chesapeake Avenue Towson, MD 2120+

887 3353

Lowrie B. Sargent and Stephen C. Smith 13243 Westmeath Lane Clarksville, Maryland 21029

N/S Russell Avenue at corner of Russell, E/S Russell Court 2012 Russell Avenue 2nd Election District - 2nd Councilmanic Petitioner(s): Lowrie B. Sargent and Stephen C. Smith

Please be advised that \$_____ is due for advertising and posting of the above captioned

THIS PEE MUST BE PAID. ALSO, THE ZONING SIGN & POST SET(S) MUST BE RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT ISSUE. DO NOT REMOVE THE SIGN & POST SET(S) FROM THE PROPERTY UNTIL THE DAY OF THE

Please forward your check via return smail to the Zoning Office, County Office Building, 111 W. Chesepeake Avenue, Room 113, Towson, Maryland 21204. It should have your case number noted thereon and be made payable to Baltimore County, Maryland. In order to prevent delay of the issuance of proper credit and/or your Order, immediate attention to this matter is suggested.

ARMOLD JABLON

Baltimore County Government Office of Zoning Administration and Development Management Office of Planning & Zoning

111 West Chesapeake Avenue Towson, MD 21204

(410) 887-3353

Your petition has been received and accepted for filing this 12th day of November, 1991.

Petitioner: Lowrie B. Sargent, et ux Petitioner's Attorney:

Baltimore County Government Office of Zoning Administration and Development Management
Office of Planning & Zoning

111 West Chesapeake Avenue Towson, MD 2120+

887 3353

NOVEMBER 20, 1991

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified berein in Room 118, Baltimore County Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

BALTIMORE COUNTY, MARYLAND
INTER-OFFICE CORRESPONDENCE

Arnold Jablon, Director DATE: November 25, 1991

Zoning Administration and

Pat Keller, Deputy Director

Office of Planning and Zoning

SUBJECT: Mass Transit Administration, Item No. 183

Clayman Property, Item No. 222

Durkee Property, Item No. 223

Blevins Property, Item No. 228

Copinger Property, Item No. 229

Griffith Property, Item No. 230

Starrett Property, Item No. 234

Sargent/Smith Property, Item No. 232/

In reference to the Petitioners' request, staff offers no

provide additional information, please contact Jeffrey Long in the

If there should be any further questions or if this office can

Development Management

comments.

PK/JL/rdn

ITEM183/TXTROZ

Office of Planning at 887-3211.

CASE NUMBER: 92-221-SPH N/S Russell Avenue at corner of Russell, E/S Russell Court 2012 Russell Avenue 2nd Election District - 2nd Councilmanic Petitioner(s): Lowrie B. Sargent and Stephen C. Smith HEARING: WEDNESDAY, DECEMBER 18, 1991 at 9:00 a.m.

Special Hearing to approve the non-conforming use of a twelve unit apartment dwelling.

Baltimore County

111 West Chesapeake Avenue

Towson, MD 21204

December 10, 1991

Baltimore County Government

Office of Zoning Administration and Development Management

Office of Planning & Zoning

(410) 887-3353

Mr. Lowrie B. Sargent C/O L & S Management 3776 Plum Hill Court Ellicott City, MD 21043

> RE: Item No. 232, Case No. 92-221-SPH Petitioner: Lowrie B. Sargent, et al Petition for Special Hearing

Dear Mr. Sargent:

The Zoning Plans Advisory Committee (ZAC) has reviewed the plans submitted with the above referenced petition. The attached comments from each reviewing agency are not intended to assure that all parties, i.e. Zoning Commissioner, attorney and/or the petitioner, are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case.

Enclosed are all comments submitted thus far from the members of ZAC that offer or request information on your petition. If additional comments are received from other members of ZAC, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

The following comments are related only to the filing of future zoning petitions and are aimed at expediting the petition filing process with this office.

The Director of Zoning Administration and Development Management has instituted a system whereby seasoned zoning attorneys who feel that they are capable of filing petitions that comply with all aspects of the zoning regulations and petitions filing requirements can file their petitions with this office without the necessity of a review by Zoning personnel.

> **Baltimore County Government** Fire Department

700 East Joppa Road Suite 901 Towson, MD 21204-5500

(301) 887-4500

NOVEMBER 25, 1991

Arnold Jablon Director Zoning Administration and Development Management Baltimore County Office Building Towson, MD 21204

RE: Property Owner: LOWRIE B. SARGENT AND STEPHEN C. SMITH

#2012 RUSSELL AVENUE Location:

Item No.:

Gentlemen:

Zoning Agenda: NOVEMBER 26, 1991

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

4. The site shall be made to comply with all applicable parts of the Fire Prevention Code prior to occupancy or beginning of operation.

5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1988 edition prior to occupancy.

Planning Group Fire Prevention Bureau Special Inspection Division

JP/KEK

To: Armoli Cablon, Director DATE: November 25, 1891

Coming Administration and Development Management

Coming Administration and Development Management

Coming Advisory Jummistee Meeting

Coming Advisory Jummistee Meeting

Coming Advisory Jummistee Meeting

The reversions Engineering Division has reviewed to a commente for the contract for the con

ACBERT W. BOWLING F.E., Chief Developers Engineering Divisio •

BALTIMORE COUNTY
ECONOMIC DEVELOPMENT COMMISSION

Memorandum

Julie Winiarski Office of Zoning Administration and Development Management

FROM: A. J. Haley, Acting Director

Economic Development Commission

R: November 7, 1991

Zoning Advisory Comments for Meeting of November 26, 1991

This office has no comment for items 216, 229, 230, 231, 232, or 234.

ZONING OFFICE

KU/m /IX

BUREAU OF TRAFFIC ENGINEERING DEPARTMENT OF PUBLIC WORKS BALTIMORE COUNTY, MARYLAND

DATE: December 12, 1991

PO: Mr. Arnold Jablon, Director
Office of Zoning Administration
and Development Management

92-221-584

FROM: Rahee J. Famili
SUBJECT: Z.A.C. Comments

TTEM NUMBER: 232

2.A.C. MEETING DATE: November 26, 1991

Adequate off-street parking should be provided

Rahee J. Famili
Traffic Engineer II

RJF/lvd

Baltimore County Government
Office of Zoning Administration
and Development Management
Office of Planning & Zoning

737 92-221 SPH

111 West Chesapeake Avenue Towson, MD 21204

Lowrie B. Sargent

October 2, 1991

3776 Plum Hill Court Ellicott City, Md. 21043

RE: 12 Apartment Unit 2012 Russell Avenue 2nd Election District

Dear Mr. Sargent:

Enclosed, please find the definition of Non-conforming use and Section 104 of the Baltimore County Zoning Regulations.

While the information provided by you indicates an apparent non-conforming use, this office can only grant Legal Non-conforming status after a public hearing. As such, any protection of the use that would be given by Section 104 of the BCZR cannot be evoked until such a time that legal non-conforming status has been granted by the Zoning Commissioner.

If you have any questions, please do not hesitate to call me at 887-3391.

Very truly yours,

JAMES E. DYER
Zoning Supervisor

Catherine A. Milton

CAM:jat cc: File

L and S MANAGEMENT

92-221-SPH

September 25, 1991

Baltimore County Zoning Office 111 West Chesapeake Avenue Room 113 Towson, Maryland 21204

3776 PLUM HILL COURT - ELLICOTT CITY, MD 21043

Gentlemen:

RWE: a

We have owned the property known as 2012 Russell Avenue since 1984, and are now in the process of selling it. We have been requested to provide written verification from Baltimore County that the use of this building as a twelve unit apartment building is an acceptable zoning use. After discussions with your staff, we are submitting the following evidence and are requesting that your Office acknowledge that the use of this building is acceptable within this zone:

Property Description: Russell Terrace Lt 473-474-475 2012 Russell Avenue

Recording Reference: Plat book 12, Folio 27

Tax Account Number: 02-07-580100

Current Owners: Lowrie B. Sargent and Stephen Smith, trading as L & S Management

Subdivision Plat of Broadacres from October, 1919 showing the general location of the property, North arrow, and distance to nearest intersection.

Resubdivision Plat of Russell Terrace, dated March 4, 1939 showing the property, known then as Crismer Apartments.

The property was built in 1924 and converted into twelve apartments in 1938. It has been in continuous use as apartments since 1938. Therefore we believe that the use of this building as twelve apartments is eligible for "grandfathering" since the use existed prior to the effective date of the County's zoning regulations. To substantiate the date of commencement of continuous use, we are submitting three notarized affidavits.

1. Helen Putnam has lived at 6440 Kriel Street, around the corner from our building since 1946. Her uncle, Walter Crismer, built the building in 1924 and converted it to twelve apartments in 1938.

September 12, 1991

To Whom It May Concern,

On September 10, 1974 Victor McFarland and myself (acting as general partners for Pyramid Ventures) purchased the property located at 2012 Russell Avenue in Woodlawn, Maryland from Mrs. Sylvia Green.

MARVIN A. MATHIS & ASSOCIATES, INC.

At the time of purchase this property consisted of 12 apartment units. Mrs Green had inherited the property from her husband. I was told that they had purchased the property sometime in 1969 from a Walter Crismer who had owned it since 1939. Mr. Crismer was a developer who, upon purchasing the building, converted it to apartments and managed it as 12 units for a long period of time prior to selling it to the Greens.

We sold this property in April of 1984. At the time it was conveyed it was still maintained as a 12 apartment unit.

Marvin A. Mathis

MAM/eb

Helen Putnam has lived around the corner from the apartment building since 1946, and her uncle Mr. Crismer

built the building in 1924, and converted the building into 12 apartments in 1938.

ties of perjury to : follows:

That the information herein given is within the personal knowledge of the Affiant and Affiant is competent to testify thereto in the event that a public hearing is scheduled in the future

Helen & Putnam
Affiant (Handwritten Signature)

MELEN C. PUTNAM
Affiant (Printed Name)

Based upon your personal knowledge, please answer the following questions in the space provided:

1. Can you verify by this affidavit, and/or testify in court if necessary, that the property located at 2012 Russell Avenue has been occupied as a $\frac{12}{1938}$ (# of units) apartment dwelling since ____ (month) $\frac{1938}{1938}$ (year). $\frac{1}{1938}$ (yes or no)

2. Can you also verify and testify, if necessary, that said apartments have been occupied by tepants every year since _____ (month) _______ (year).

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY, this /3 day of _______, 192, before me, a Notary Public of the State of Maryland, and in the County of Baltimore, personnally appeared / LOTKAM the Affiant herein, personally known or satisfactorily identified to me as such Affiant, and made oath in due form of law that the matters and facts hereinabove set forth are true and correct to the best of his/her knowledge and belief

AS WITNESS my hand and Notarial Seal Och (f. MMON)
Committee &-1-95

HIBIT -

Ruth Rixham was a tenant at 2012 Russell Av. from

1942 to 1947.

ULI TONATI

The undersigned hereby affirms under the penalties of perjury to the Zoning Commissioner of Baltimore County as follows:

That the information herein given is within the personal knowledge of the Affiant and Affiant is competent to testify thereto in the event that a public hearing is scheduled in the future.

Affiant (Handwritten Signature)

Based upon your personal knowledge, please answer the following

questions in the space provided:

1. Can you verify by this affidavit, and/or testify in court if necessary, that the property located at 2012 Russell Avenue has

been occupied as a /2 (* of units) apartment dwelling since A/R/L- (month) /34.) (year).

2. Can you also verify and testify, if necessary, that said apartments have been occupied by tenants every year since <u>PY2 P1+7</u> (month) _____ (year).

3. Will you realize any gain from the sale of this property? N_{C} (yes or no).

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

I HEREBY CERTIFY, this day of day of

PETTINGEN.

FYHIBIT 3

8651 Baltimore National Pike, Ellicott City, MD 21043 • (301) 750-2600

Ward Tiernan lives across the street from the building at 2013 Russell Avenue since the early 1940's.

The undersigned hereby affirms under the penalties of perjury to the Zoning Commissioner of Baltimore County as follows:

That the information herein given is within the personal knowledge of the Affiant and Affiant is competent to testify thereto in the event that a public hearing is scheduled in the future

Affiant (Handwritten Signature)

5. WARD TIERNAN Affiant (Printed Name)

Based upon your personal knowledge, please answer the following questions in the space provided:

1. Can you verify by this affidavit, and/or testify in court if necessary, that the property located at 2012 Russell Avenue has been occupied as a ______(# of units) apartment dwelling since ______ (month) ______(year). ______(yes or no)

2. Can you also verify and testify, if necessary, that said apartments have been occupied by tenants every year since _____ (month) _____ (year).

3. Will you realize any gain from the sale of this property?

STATE OF MARYLAND, COUNTY OF BALTIMORE, to wit:

AS WITNESS my hand and Notarial Seal Tuck (1907)

Parit O

MARVIN A. MATHIS & ASSOCIATES, INC.

September 12, 1991

To Whom It May Concern.

On September 10, 1974 Victor McFarland and myself (acting as general partners for Pyramid Ventures) purchased the property located at 2012 Russell Avenue in Woodlawn. Maryland from Mrs. Sylvia Green.

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We sold this property in April of 1984. At the time it was conveyed it was still maintained as a 12 apartment unit.

Marin Ce Matter

MAM/eb

PETITION S

8651 Baltimore National Pike, Ellicott City, MD 21043 • (301) 750-2600

